

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARIAH LYNN BAYLISS,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 3:13-cv-05866-BHS-KLS

REPORT AND RECOMMENDATION

Noted for August 29, 2014

Plaintiff has brought this matter for judicial review of defendant's denial of her applications for disability insurance and supplemental security income ("SSI") benefits. This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule MJR 4(a)(4) and as authorized by Mathews, Secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). After reviewing the parties' briefs and the remaining record, the undersigned submits the following Report and Recommendation for the Court's review, recommending that for the reasons set forth below, defendant's decision to deny benefits should be reversed and this matter should be remanded for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

On June 25, 2009, plaintiff filed an application for SSI. See Administrative Record ("AR") 158-60. Plaintiff also filed an application for disability insurance benefits on July 7, 2009. AR 152-57. In these applications, plaintiff alleged disability as of January 2, 2001, due to post traumatic stress disorder, attention deficit disorder, social disorder, depressive disorder,

1 and fetal alcohol syndrome. See AR 176. Plaintiff's applications were denied upon initial
2 administrative review and on reconsideration. See AR 84-90, 92-102. A hearing was held before
3 an administrative law judge ("ALJ") on January 11, 2011, at which plaintiff, represented by
4 counsel, appeared and testified, as did a vocational expert ("VE"). See AR 41-79.

5 On February 1, 2011, the ALJ issued a decision in which plaintiff was determined to be
6 not disabled. See AR 22-40. Plaintiff's request for review of the ALJ's decision was denied by
7 the Appeals Council on August 1, 2013, making the ALJ's decision defendant's final decision.
8 See AR 1-7; see also 20 C.F.R. §§ 404.981, 416.1481. On October 2, 2013, plaintiff filed a
9 complaint in this Court seeking judicial review of the ALJ's decision. Dkt. No.1. The
10 administrative record was filed with the Court on February 21, 2014. Dkt. No. 12. The parties
11 have completed their briefing, and thus this matter is now ripe for judicial review and a decision
12 by the Court.
13

14 Plaintiff argues the ALJ's decision should be reversed and remanded to defendant for
15 further proceedings because the ALJ erred: (1) in evaluating the medical evidence in the record;
16 and (2) in rejecting the lay witness evidence in the record. The undersigned agrees the ALJ erred
17 in determining plaintiff to be not disabled, but, for the reasons set forth below, recommends that
18 while defendant's decision should be reversed, this matter should be remanded for further
19 administrative proceedings.
20

21 DISCUSSION

22 The determination of the Commissioner of Social Security (the "Commissioner") that a
23 claimant is not disabled must be upheld by the Court, if the "proper legal standards" have been
24 applied by the Commissioner, and the "substantial evidence in the record as a whole supports"
25 that determination. Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); see also Batson v.
26

1 Comm’r of Soc. Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004); Carr v. Sullivan, 772 F.Supp.
 2 522, 525 (E.D. Wash. 1991) (“A decision supported by substantial evidence will, nevertheless,
 3 be set aside if the proper legal standards were not applied in weighing the evidence and making
 4 the decision.”) (citing Browner v. Sec’y of Health and Human Serv., 839 F.2d 432, 433 (9th Cir.
 5 1987)).

6
 7 Substantial evidence is “such relevant evidence as a reasonable mind might accept as
 8 adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401 (1971) (citation
 9 omitted); see also Batson, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if
 10 supported by inferences reasonably drawn from the record.”). “The substantial evidence test
 11 requires that the reviewing court determine” whether the Commissioner’s decision is “supported
 12 by more than a scintilla of evidence, although less than a preponderance of the evidence is
 13 required.” Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence
 14 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.
 15 Allen v. Heckler, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence
 16 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting
 17 Rhinehart v. Finch, 438 F.2d 920, 921 (9th Cir. 1971)).¹

18 I. The ALJ’s Evaluation of the Medical Evidence in the Record

19
 20
 21
 22
 23 ¹ As the Ninth Circuit has further explained:

24 . . . It is immaterial that the evidence in a case would permit a different conclusion than that
 25 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by
 26 substantial evidence, the courts are required to accept them. It is the function of the
 [Commissioner], and not the court’s to resolve conflicts in the evidence. While the court may
 not try the case de novo, neither may it abdicate its traditional function of review. It must
 scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are
 rational. If they are . . . they must be upheld.

Sorenson, 514 F.2dat 1119 n.10.

1 Plaintiff argues the ALJ erred in his assessment of the medical opinion of examining
2 psychologist Norma L. Brown, PhD. Dkt. No. 16, pp. 12-15. Dr. Brown examined plaintiff on
3 two separate occasions and opined, among other limitations, that plaintiff had at least marked
4 limitations in the ability to relate appropriately to coworkers and supervisors, and severe
5 limitations in the ability to respond appropriately to and tolerate the pressures and expectations
6 of a normal work setting. See AR 273, 288. Dr. Brown defined “marked” as a “very significant
7 interference with basic work related activities”, and “severe” as an “inability to perform one or
8 more basic work related activities”. AR 271, 286. These limitations are significant as the basic
9 demands of competitive unskilled work require the ability to respond appropriately to
10 supervision, coworkers and usual work situations. See Social Security Ruling (“SSR”) 85-15,
11 1985 WL 56857*4. A substantial loss in the ability to meet any of these basic activities would
12 justify a finding of disabled under the Act. Id. The ALJ rejected Dr. Brown’s opinions because
13 they were inconsistent with Dr. Brown’s objective findings on mental status examination
14 (“MSE”). AR 31. This reason, however, is not a specific and legitimate reason supported by
15 substantial evidence sufficient to reject the opinions of an examining psychologist. Lester v.
16 Chater, 81 F.3d 821, 830 (9th Cir. 1996).

17 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings
18 “must be supported by specific, cogent reasons.” Reddick v. Chater, 157 F.3d 715, 725 (9th Cir.
19 1998). The ALJ can do this “by setting out a detailed and thorough summary of the facts and
20 conflicting clinical evidence, stating his interpretation thereof, and making findings.” Id. The
21 ALJ also may draw inferences “logically flowing from the evidence.” Sample v. Schweiker, 694
22 F.2d 639, 642 (9th Cir. 1982). Further, the Court itself may draw “specific and legitimate
23 inferences from the ALJ’s opinion.” Magallanes v. Bowen, 881 F.2d 747, 755, (9th Cir. 1989).

1 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of
2 an examining psychologist. Lester, 81 F.3d at 830. Even when an examining psychologist’s
3 opinion is contradicted, that opinion “can only be rejected for specific and legitimate reasons that
4 are supported by substantial evidence in the record.” Id. at 830-31. Here, plaintiff concedes the
5 specific and legitimate standard applies to the ALJ’s assessment of Dr. Brown’s opinion. See
6 Dkt. No. 16, p 13.

7
8 The ALJ rejected Dr. Brown’s opinion regarding plaintiff’s social limitations because it
9 was “contrary to the objective observations from the [MSE], in which plaintiff was alert,
10 cooperative, had an appropriate appearance, and exhibited normal speech and appropriate eye
11 contact.” AR 31 (citing AR 290); see AR 288. The ALJ also noted that Dr. Brown observed
12 plaintiff’s thought processes and content were within normal limitations. AR_31, 290. Although
13 discrepancies between a medical source’s functional assessment and that source’s clinical notes,
14 recorded observations and other comments regarding a claimant’s capabilities may provide a
15 basis for rejecting a medical source’s opinion, an ALJ may not substitute his own interpretation
16 of medical findings for that of a qualified medical source. See Bayliss v. Barnhart, 427 F.3d
17 1211, 1216 (9th Cir. 2005)(discrepancies between a medical source’s functional assessment and
18 that source’s clinical notes, recorded observations and other comments regarding a claimants
19 capabilities “is a clear and convincing reason for not relying” and that assessment); Schmidt v.
20 Sullivan, 914 F.2d 117, 118 (7th Cir. 1990) (“judges, including administrative law judges of the
21 Social Security Administration, must be careful not to succumb to the temptation to play doctor.
22 The medical expertise of the Social Security Administration is reflected in regulations; it is not
23 the birthright of the lawyers who apply them. Common sense can mislead; lay intuitions about
24 medical phenomena are often wrong”) (internal citations omitted)); see also Gonzalez Perez v.
25
26

1 Sec'y of Health and Human Serv., 812 F.2d 747, 749 (1st Cir. 1987) (ALJ may not substitute
2 own opinion for findings and opinion of physician); McBrayer v. Sec'y of Health and Human
3 Serv., 712 F.2d 795, 799 (2nd Cir. 1983) (ALJ cannot arbitrarily substitute own judgment for
4 competent medical opinion); Gober v. Mathews, 574 F.2d 772, 777 (3rd Cir. 1978) (ALJ not free
5 to set own expertise against that of physician who testified before him).

6
7 In conjunction with the examinations of plaintiff, Dr. Brown completed clinical
8 interviews, MSE's, and psychometric testing, including the Trail Making Test ("TMT"), Beck
9 Anxiety Inventory ("BAI"), and Beck Depression Inventory-III ("BDI-III"). See AR 271-98.
10 Dr. Brown's opinions regarding plaintiff's limitations were based on the totality of this
11 evaluation, not just the findings on MSE. See AR 273, 288 (indicating Dr. Brown's assessment
12 of plaintiff's functional limitations was based on a combination of plaintiff's own reports, an
13 interpretation of testing, and Dr. Brown's own clinical observations during the interview).

14
15 Moreover, the findings on MSE used by the ALJ to reject Dr. Brown's opinion related
16 only to plaintiff's presentation. See AR 31 (citing AR 290 rejecting Dr. Brown's opinion
17 because plaintiff was alert, cooperative, and had appropriate appearance, normal speech, and
18 appropriate eye contact). However, the normal MSE findings highlighted by the ALJ do not
19 provide a complete picture of plaintiff's presentation during the examinations conducted by Dr.
20 Brown. See AR 287, 290 (very lethargic, abnormally still motor activity/motor retardation, flat
21 affect, dysphoric/anxious mood), 273, 275 (very easily confused, very easily distracted, labile
22 affect, very anxious mood, paranoid thought content, hears voices occasionally). Additionally,
23 Dr. Brown indicated plaintiff demonstrated paranoid thought content. See AR 290
24 (characterizing plaintiff's thought content as both "WNL" and "other," noting plaintiff reported
25
26

1 experiencing auditory hallucinations, including hearing people outside her window, which Dr.
2 Brown indicated was associated with paranoia).

3 The ALJ failed to identify any objective findings that contradicted Dr. Brown's opinion
4 regarding plaintiff's ability to respond appropriately to and tolerate the pressures and
5 expectations of a normal work setting. Dr. Brown's findings on examination were consistent
6 with this conclusion. For example, Dr. Brown observed that plaintiff had "no skills to deal
7 [with] anxiety." AR 288. Plaintiff's score on the Beck Anxiety Inventory ("BA") indicated
8 severe anxiety. AR 286. Consistent with these findings, plaintiff's memory testing scores were
9 "low due to anxiety [and] trouble focusing." AR 290, 292. Dr. Brown observed that plaintiff's
10 anxiety also interfered with plaintiff's ability to perform activities; for example, Dr. Brown noted
11 that plaintiff had trouble with getting on the wrong bus. See AR 287; accord AR 291.
12

13 For these reasons, the ALJ's reason for rejecting Dr. Brown's evaluation was not a
14 specific and legitimate reason supported by substantial evidence sufficient to reject the opinion
15 of an examining psychologist. See Lester, 81 F.3d at 830-31. As such, this Court recommends
16 the ALJ decision be reversed and remanded for further consideration of Dr. Brown's medical
17 opinion.
18

19 II. The ALJ's Evaluation of the Lay Witness Evidence in the Record

20 Plaintiff also argues the ALJ erred in his assessment of the lay witness testimony of
21 plaintiff's long time boyfriend, and of plaintiff's father. Dkt. No. 16, pp 15-20. The Court
22 already has concluded that the ALJ erred in reviewing the medical evidence, and that this matter
23 should be reversed and remanded for further consideration. For this reason, it is not necessary for
24 the Court to reach a determination on this issue. However, an assessment of lay witness
25 testimony relies in part on an assessment of the medical evidence. See 20 C.F.R. §§
26

404.1513(d)(4). 416.913(d)(4); SSR 06-03p, WL 2006 2329939*3-*5. As such, the statements of plaintiff's father and boyfriend also should be reassessed on remand.

CONCLUSION

Based on the foregoing discussion, the undersigned recommends the Court find the ALJ improperly concluded plaintiff was not disabled. Accordingly, the undersigned recommends as well that the Court REVERSE the ALJ's decision and REMAND this matter to defendant for further administrative proceedings in accordance with the findings contained herein, and pursuant to sentence four of 42 U.S.C. § 405(g).

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b), the parties shall have **fourteen (14) days** from service of this Report and Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. See Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **August 29, 2014**, as noted in the caption.

DATED this 6th day of August, 2014.



Karen L. Strombom
United States Magistrate Judge